

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-33 (Sub-No. 70)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—WALLACE BRANCH, ID

Decided: July 25, 2000

By decision and certificate of interim trail use or abandonment (CITU) served on June 26, 2000, the Board gave final approval to the Union Pacific Railroad Company (UP) to salvage its 71.5-mile Wallace Branch rail line in Benewah, Kootenai and Shoshone Counties, ID, subject to four environmental conditions and other terms and conditions. The decision and CITU is scheduled to become effective on July 26, 2000. On July 21, 2000, Citizens Against Rails-to-Trails (CART) filed a petition to stay the effective date pending disposition of its petition (filed on July 19, 2000) to reopen the proceeding.

We will reject CART's stay request because it was late-filed. The Board's regulations specify that, if a petitioner wishes to have its petition for reopening considered by the Board before an abandonment authorization takes effect, it must file its petition for stay along with its petition for reopening no later than 15 days after service of the decision authorizing abandonment. 49 CFR 1152.25(e)(2)(i) and (e)(7). Here, CART's petition for stay was not filed until late on Friday, July 21, 2000, some 10 days after its due date and only shortly before the decision's effective date.

CART argues that the Board should nevertheless consider its late-filed petition "in the interests of the efficiency and finality of the proceeding." CART undermines its own argument, however, by acknowledging that the June 26 decision does not determine the final disposition of all parties' interests. Rather, salvage of the line is subject to compliance with the four new environmental conditions imposed in the June 26, 2000 decision. Moreover, the CITU permits interim trail use only if the parties reach an agreement in accordance with the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and the Board's regulations at 49 CFR 1152.29. Accordingly, CART's arguments for accepting its late filing are not persuasive.

The petition lacks merit as well as timeliness. The standards governing a stay request are: (1) whether petitioner is likely to prevail on the merits of an appeal; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). CART fails to meet these standards.

CART is not likely to prevail on the merits of its petition to reopen. Its argument that the issuance of a CITU requires the preparation of an environmental assessment or environmental impact statement has been consistently rejected by this agency, and by its predecessor, the Interstate Commerce Commission, whose position has been upheld by the courts. Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990). CART's claim that this case presents a situation that makes that precedent inapplicable is unpersuasive. See June 26, 2000 decision at 11-12 (making it clear that in conducting environmental review in abandonment cases, the Board's role is limited to the anticipated impacts of the abandonment proposal and that, given the Board's limited, ministerial role under the Trails Act, questions related to whether and how this right-of-way should be used as a trail are not matters for the Board's consideration). Here, as in every Trails Act case, the Board issued a CITU because the trail sponsors had submitted a joint statement of willingness to assume financial responsibility for the right-of-way, and acknowledged that use of the right-of-way is subject to possible future reactivation of rail service in compliance with 49 CFR 1152.29 – thereby satisfying the statutory criteria – and UP had agreed to negotiate.

CART's argument that the Board failed to adequately examine the environmental impacts of salvage of the line is refuted by the Supplemental Environmental Assessment prepared by the Section of Environmental Analysis (SEA) and the Board's decision. The potential environmental effects of salvage have been thoroughly addressed through SEA's and the Board's independent review of all of the information submitted by UP, agencies and others with specialized expertise (including the Environmental Protection Agency (EPA)), and members of the general public. Moreover, as explained in the Board's decision (at pp. 9-11), SEA and the Board have addressed the concerns of the court in Idaho v. ICC, 35 F.3d 585 (D.C. Cir. 1994). Finally, CART's argument that the Trails Act is inapplicable to this case because the right-of-way is contaminated lacks merit. As explained in the Board's decision, there has been extensive environmental analysis of this right-of-way and the implications of preparing the land for possible conversion to interim trail use have been thoroughly assessed by the EPA and others through the Engineering Evaluation and Cost Analysis (EE/CA) and Consent Decree process. Moreover, it is clear from the record here that those agencies will oversee UP's salvage and response activities during the salvage process and possible conversion to interim trail use.

CART has also failed to show that it will suffer irreparable harm in the absence of a stay, given the extensive environmental analysis that has taken place for the last several years involving this right-of-way. As the Board's decision explains, the potential environmental impacts of salvage have been thoroughly explored and, if the actions UP would be required to take under the EE/CA, the Track Salvage Plan and the Biological Assessment are implemented, along with the additional mitigation the Board imposed, UP's proposal to salvage the line would not have significant adverse environmental impacts. Moreover, as SEA concluded, the "no action alternative" – leaving the track in place – would harm the environment.

A stay will adversely impact other parties. As detailed in the Board's decision, EPA, the State of Idaho, the Coeur d'Alene Tribe, and UP all support the Board's analytical approach and urge the Board to promptly authorize salvage and to issue a CITU. The prompt implementation

of this project will be delayed and the benefits of it postponed if a stay is issued. Of all the parties involved in this case, CART alone seeks to frustrate its prompt implementation.

Finally, the public interest disfavors a stay. The terms governing the most appropriate way to salvage this line are the product of extensive environmental review, culminating in a consent decree lodged with the United States District Court of Idaho in United States & State of Idaho v. UP, No. CV 99-0606-N-EJL, and Coeur d'Alene Tribe v. UP, No. CV 91-0342-N--EJL. EPA, the Department of Justice, the Department of the Interior, the State of Idaho, the Coeur d'Alene Tribe, and UP all supported the Board's analytical approach and urged that the Board authorize salvage and issue a CITU as promptly as possible.

The burden is upon CART to demonstrate conclusively that it has met the conditions for issuance of a stay. CART has fallen far short of making such a demonstration. It has failed to show that any relief is necessary or appropriate in the circumstances. Accordingly, its stay petition will be rejected.

It is ordered:

1. CART's petition for stay is rejected.
2. The decision is effective on the date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary